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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,778	10/16/2003	Brett J. Diffley		9850

7590 07/14/2004  
Delbert J. Barnard  
BARNARD, LOOP & McCORMACK LLP  
P.O. Box 58888  
Seattle, WA 98138-1888

EXAMINER

CEGIELNIK, URSZULA M

ART UNIT PAPER NUMBER

3712

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/687,778

Applicant(s)

DIFFLEY, BRETT J.

Examiner

Urszula M Cegielnik

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 9 is/are rejected.
- 7) ☒ Claim(s) 2-8 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

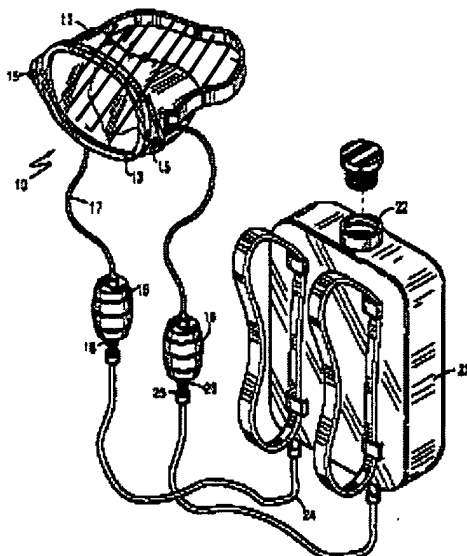
### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Waller.



Waller discloses a water toy comprising a buoyant body (12) having a lower portion (the lower portion of reference numeral 12) adapted to float on a body of water, and an upper portion (the upper portion of reference numeral 12) connected to the lower portion (the lower portion of reference numeral 13) and extending upwardly from it; said upper portion including top (the top portion of reference numeral 12) and side walls (the portion extending rearwardly of reference numeral 15) forming an inner cavity (the inner

cavity formed by area between the strap and mask), said lower portion (the lower portion of reference numeral 12) including a bottom opening (the point of entry or ingress of the mask for a user's head) entering into said inner cavity (the inner cavity formed by area between the strap and mask); said bottom opening and said cavity (the inner cavity formed by area between the strap and mask) being sufficiently large to receive the head of a person (the cavity is inherently large to receive the head of a person, since the structure is for mounting onto a person's head); said upper portion (the upper portion of reference numeral 12) including at least one sight opening (the upper portion encompassing reference numeral 13) through which a person whose head is in the cavity can look; at least one water gun (15) mounted on the buoyant body, said water gun (15) having a water discharging portion (the upper portion of reference numeral 17) above the water; a pump (20) for pumping water up to and out through the water discharging portion (the upper portion of reference numeral 17), and a hand operated control portion (16) positioned to be grasped by and operated by a hand of a person whose head is in the cavity; whereby said person can use the control (16) to operate the pump (20) cause water to discharge from the discharging portion (the upper portion of reference numeral 17) of the water gun (15); the lower portion includes a second opening (proximate reference numeral 15) on one side of the bottom opening and a third opening (proximate reference numeral 15) on the other side of the bottom opening, a first water gun (15) is situated in the second opening, with its discharging portion (the upper portion of reference numeral 17) above the lower portion of the buoyant body (12) and its hand operated control portion (16) positioned in the water

below the buoyant body (12) and a second water gun (15) is situated in the third opening (proximate reference numeral 15), with its discharging portion (the upper portion of reference numeral 17) above the lower portion (the lower portion of reference numeral 12) of the buoyant body (12) and its hand operated control portion (16) positioned in the water below the buoyant body (12).

***Allowable Subject Matter***

Claims 2-8 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

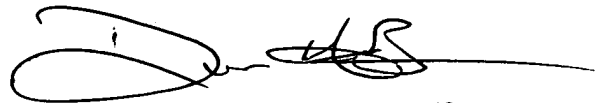
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 5:30AM - 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. **The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

Urszula M. Cegielnik  
Assistant Examiner  
Art Unit 3712

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal line extending to the right.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700